

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

UNITED STATES OF AMERICA,                )  
  )  
  )  
v.   )      CASE NO. 2:06CR76-VPM  
  )  
CASTIN J. HEINS                             )

**ORDER ON MOTION**

On 7July 2006, the defendant filed an Unopposed Motion to Continue Trial in this case (Doc. # 14), and he waived his right to speedy trial on 10 July 2006 (Doc. # 15). While the granting of a continuance is left to the sound discretion of the trial judge, *United States v. Warren*, 772 F.2d 827, 837 (11th Cir. 1985), the court is, of course, limited by the requirements of the *Speedy Trial Act*, 18 U.S.C. §3161 [“The Act]. The Act provides generally that the trial of a defendant in a criminal case shall commence within 70 days of the latter of the filing date of the indictment or the date the defendant appeared before a judicial officer in such a matter. 18 U.S.C. §3161(c)(1). See *United States v. Vassar*, 916 F.2d 624 (11th Cir. 1990). The Act excludes from this 70-day period any continuance that the judge grants "on the basis of [her] findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial". 18 U.S.C. §3161(h) (8) (A).

In this case, the defendant has applied for pretrial diversion from the United States Attorney. The process for considering defendants for the program and making decisions about their eligibility is a time-consuming one that is certain to endure beyond the trial date

in this case. The court has reviewed the information in this case and concludes that, based upon the court's experience with defendants awarded pretrial diversion, the defendant is within the category of persons eligible for pretrial diversion.

There is only one defendant in this case, and the government does not object to a continuance. Moreover, the defendant has filed his Waiver of Speedy Trial (Doc. # 15). The court concludes that the ends of justice served by continuing this case outweigh the interests of the public and the defendant in a speedy trial.

Accordingly, it is hereby

ORDERED that the motion for continuance filed by the defendant be GRANTED and that this cause be set on the misdemeanor term commencing 11 September 2006 with jury selection before Judge Susan Russ Walker. The trial is set to immediately begin following jury selection before the undersigned.

DONE this 11<sup>th</sup> day of July, 2006.

/s/ Vanzetta Penn McPherson  
VANZETTA PENN MCPHERSON  
UNITED STATES MAGISTRATE JUDGE